

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**RICHARD JORDAN and RICKY CHASE**

*Plaintiffs*

**THOMAS EDWIN LODEN, JR.,  
ROGER ERIC THORSON, and  
ROBERT SIMON, JR.**

*Intervenors*

*No. 3:15-cv-00295-HTW-LGI*

**vs.**

**BURL CAIN, Commissioner, et al.**

*Defendants*

**PLAINTIFF-INTERVENOR THOMAS EDWIN LODEN, JR.'S  
OBJECTION TO, AND MOTION TO RESCIND,  
ISSUANCE OF WRIT OF HABEAS CORPUS AD TESTIFICANDUM**

Plaintiff-Intervenor Thomas Edwin Loden, Jr., by counsel, moves this Court to rescind the Writ of Habeas Corpus Ad Testificandum that the Court issued on its own motion on July 25, 2022.

Mr. Loden has been advised by the medical staff at the Mississippi State Penitentiary that tumors have been discovered in each of his lungs. A PET scan undertaken at the direction of the medical staff shows evidence of emphysema; a biopsy has been scheduled to determine if Mr. Loden is suffering from lung cancer. Counsel is concerned that the long drive from the Mississippi State Penitentiary to the courthouse in Jackson will have adverse health effects for Mr. Loden.

Mr. Loden recognizes that is in the Court's discretion whether to issue a Writ of Habeas Corpus Ad Testificandum, but the Writ should only be issued if "the prisoner's presence will substantially further the resolution of the case." *Ballard v. Spradley*, 557 F.2d 476, 480 (5th Cir. 1977). Counsel submits that Mr. Loden's presence at the hearing will not further the resolution of this case. Mr. Loden has filed a Notice on July 22, 2022 [Docket 246] withdrawing the

“Motion to Withdraw” [Docket 238] sent by him to the Court on April 29, 2022. A civil litigant may withdraw a motion before it is argued and decided, particularly where no other party claims any prejudice. Because Mr. Loden has withdrawn his Motion to Withdraw, his claims in this action cannot be dismissed.

Both Ms. Ferraro and Mr. McDonald will be present (Ms. Ferraro in person, Mr. McDonald by Zoom), in the event the Court wishes to inquire further about this matter.

Mr. Loden further submits this Objection to make clear that he does not waive the attorney client privilege. Although Mr. Loden’s counsel will object to questions that clearly call for privileged attorney client communications, it is possible that Mr. Loden might inadvertently divulge such communications. If Mr. Loden does so, he does not mean for any waiver to occur.

WHEREFORE, PREMISES CONSIDERED, Plaintiff-Intervenor requests that this Court rescind the Writ of Habeas Corpus Ad Testificandum issued on July 25, 2022.

Respectfully Submitted,

By: /s/Stacy Ferraro  
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